



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200221051

Uniform Issue List: 401.06-00 and 408.00-00

FEB 26 2002

T. EP. RA. TI

Legend:

Taxpayer A =

Taxpayer B =

IRA X =

IRA Y =

Trust M =

Company N =

Sum O =

Dear :

This is in response to a ruling request dated June 18, 2001, as supplemented by additional correspondence dated December 26, 2001, and February 1, 2002, from your authorized representative concerning sections 401(a)(9) and 408 of the Internal Revenue Code ("Code").

The following facts and representations have been submitted:

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Taxpayer B, who was married to Taxpayer A, died on _____ Taxpayer B was born on _____, and Taxpayer A was born on _____. Taxpayer B died after attaining age 70 & ½. Taxpayer A has currently reached age 70 & ½. Taxpayers A and B own IRA X and IRA Y, respectively, which are individual retirement accounts meeting the requirements of Code section 408. Taxpayer B took distributions from IRA Y in the amount of \$_____ for _____ \$_____ for _____ and \$_____ for _____. Taxpayer A took distributions from IRA X in the amount of \$_____ for _____.

Taxpayer B established IRA Y on _____. At the time of his death, IRA Y had a market value of Sum O. Taxpayer A established IRA X on _____. Both IRA X and IRA Y are maintained with Company N. On _____, Taxpayers A and B established Trust M. Taxpayers A and B were the Trustors and Trustees of Trust M. Upon the death of one, the survivor assumed the obligations of trustee. Prior to his death, Taxpayer B named Trust M as beneficiary of IRA Y.

The terms of Trust M include the following: 1) upon the death of the first Trustor, all of the income of the trust shall be paid to the surviving Trustor by the Trustee and as much of the principal of the trust as the Trustee deems appropriate for the surviving Trustor's support, comfort, health, care, and general welfare ...; 2) if the surviving Trustor is disabled, the Trustee may withhold income payments and shall instead pay to or apply for the benefit and care of the surviving Trustor as much of the trust income and principal as the Trustee deems appropriate; and 3) the surviving Trustor may, in whole or in part, revoke or amend the trust.

Trust M provides, in relevant part, that the surviving Trustor (Taxpayer A) may amend Trust M in whole or in part. Pursuant to this authority, on December 19, 2001, Taxpayer A amended Trust M to provide that the surviving Trustor thereof can demand at any time any of the principal of the trust, unconditionally.

Pursuant to the above provision of Trust M, prior to December 31, 2001, Taxpayer A transferred the amounts remaining in Taxpayer B's IRA Y to her IRA X. _____.

Based on the foregoing facts and representations, you have requested the following rulings:

- 1) Taxpayer B's IRA Y is not an inherited IRA as defined in Code section 408(d)(3)(C)(i).
- 2) Taxpayer A can be treated as the distributee/payee of Taxpayer B's IRA Y.

3) Taxpayer B's IRA Y could be directly transferred to Taxpayer A's IRA X and the amounts transferred were not included in the gross income of Taxpayer A.

4) Taxpayer A may use the Uniform Required Minimum Distribution Table for distributions in 2002 and subsequent years for the combined funds of Taxpayer B's transferred IRA Y and Taxpayer A's existing IRA X under section 1.401(a)(9)-5 of the Proposed Income Tax Regulations.

Regarding Ruling Requests one, two, and three, Code section 408(d)(1) provides, in general, that any amount paid or distributed from an IRA shall be includible in gross income by the payee or distributee, as the case may be, in the manner provided under Code section 72.

Section 408(d)(3)(A)(i) provides, in part, that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount is paid into an IRA for the benefit of such individual not later than 60 days after the date on which that individual received the distribution.

Section 408(d)(3)(B) of the Code provides that section 408(d)(3)(A) does not apply to any transfer described in section 408(d)(3)(A)(i) if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in such subparagraph from an IRA which was not includible in his/her gross income because of the application of section 408(d)(3)(A).

Section 408(d)(3)(E) of the Code provides, generally, that section 408(d)(3) shall not apply to any amount to the extent such amount is required to be distributed under either subsection (a)(6) or (b)(3).

Section 408(d)(3)(C)(i) of the Code provides, in part, that in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) of the Code states that an IRA shall be treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual and such individual was not the surviving spouse of such other individual.

Thus, pursuant to section 408(d)(3) of the Code, a surviving spouse who acquires IRA proceeds from and by reason of the death of his/her spouse, may elect to transfer the proceeds into his/her own IRA.

Generally, if a decedent's IRA proceeds pass through a third party, e.g. a trust, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to transfer the IRA proceeds into his/her own IRA.

However, if a trust is the beneficiary of an IRA, and the surviving spouse is sole trustee of the trust with power to allocate, and, as beneficiary has the right to demand payment of trust principal at any time and for any reason, then for purposes of section 408(d)(3) of the Code, if the trustee of the trust pays to the surviving spouse, as beneficiary of the trust, proceeds of an IRA which constitute trust principal, the Service will treat the surviving spouse as having acquired the IRA proceeds from the decedent and not from the trust.

In this case, Taxpayer B maintained IRA Y at the time of his death. Trust M was the named beneficiary of IRA Y at the time of Taxpayer B's death, and Taxpayer A, the surviving spouse, is both the sole trustee of Trust M and the beneficiary thereof with the power to demand payment of part or all of its principal.

Therefore, based on the foregoing, we conclude: 1) Taxpayer B's IRA Y is not an inherited IRA as defined in Code section 408(d)(3)(C)(i); 2) Taxpayer A can be treated as the distributee/payee of Taxpayer B's IRA Y; and 3) Taxpayer B's IRA Y could be directly transferred to Taxpayer A's IRA X and the amounts transferred were not included in the gross income of Taxpayer A in the year of transfer.

Regarding ruling request four, section 1.408-8,Q&A.-4(b) of the regulations states, in relevant part, that in the case of an individual dying after December 31, 1983, the individual's surviving spouse may elect to treat the spouse's entire interest in the trust as the spouse's own account. If the surviving spouse makes such an election, the surviving spouse's interest in the account would then be subject to the distribution requirements of Code section 401(a)(9)(A) rather than those of Code section 401(a)(9)(B). An election to claim the IRA as the surviving spouse's own will be considered to have been made by the surviving spouse if any required amounts in the account (including any amounts that have been transferred into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under Code section 401(a)(9)(B). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Section 1.408-8,Q&A.-6 states if the surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the

spouse's own IRA in accordance with the provisions in A-4.

Once the transfer from IRA Y to IRA X was completed, the transferred amounts became part of the account balance of Taxpayer A's IRA X, and must be considered in calculating Taxpayer A's minimum required distributions from her IRA in the year following the year of transfer and thereafter. Once Taxpayer A is treated as the individual for whose benefit the IRA is maintained, there is no longer an IRA maintained for the benefit of Taxpayer B.

Section 1.401(a)(9)-5, Q&A.-4 of the "new" proposed regulations issued on January 17, 2001, contains a Table for determining distribution periods for required minimum distributions. These proposed regulations for required minimum distributions from retirement plans, which were subsequently published in Internal Revenue Bulletin 2001-11, page 865, state, in the Preamble thereto, that the new regulations are proposed to be effective for distributions for calendar years beginning on or after January 1, 2002. Therefore, the new proposed regulations contained in IRB 2001-11 may be used to determine required minimum distributions beginning in the year 2002.

In this case, Taxpayer A transferred the remaining account balance in Taxpayer B's IRA Y to her IRA X by December 31, 2001. Thus, since Taxpayer A has attained age 70 & ½, with respect to said transferred amounts, Taxpayer A has a required distribution with respect to calendar year 2002 which must be made no later than December 31, 2002, and which will be calculated based on the IRA X account balance as of December 31, 2001.

Therefore, we conclude 4) Taxpayer A may use the Uniform Required Minimum Distribution Table (of section 1.401(a)(9)-5, Q&A.-4 of the proposed regulations issued on January 17, 2001) for distributions in 2002 and subsequent years for the combined funds of Taxpayer B's transferred IRA Y and Taxpayer A's existing IRA X under section 1.401(a)(9)-5 of the Proposed Income Tax Regulations.

Except to the extent cited above, the ruling does not address the application of proposed regulations for Code section 401(a)(9) issued on January 17, 2001.

This ruling is based on the assumption that both IRA X and Taxpayer B's IRA Y meet the requirements Code section 408 at all relevant times.

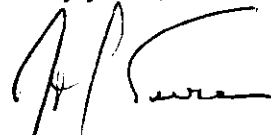
This ruling is directed only to the taxpayer who requested it. Code section 6110(k) provides that it may not be used or cited by others as precedent.

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Copies of this ruling have been sent to your authorized representatives pursuant to a power of attorney on file in this office.

Should you have any questions concerning this letter ruling, please contact
T:EP:RA:T1 , of my staff at (202) 283-9610.

Sincerely yours,



Manager, Employee Plans
Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: